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Attorneys for Plaintiff Blendtec Inc.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

BLENDTEC INC., a Utah corporation,

Plaintiff,

vs.

BLENDJET, INC., a Delaware corporation,

Defendant.

**PLAINTIFF BLENDTEC INC.'S
MOTION TO QUASH SUBPOENAS
TO BUSINESS PARTNERS
(BLENDFRESH AND BLENDID)**

Civil No. 2:21-cv-00668-TC-DBP

Judge Tena Campbell
Magistrate Judge Dustin B. Pead

Pursuant to FRCP 26, 34, and 45(d)(3), Blendtec moves to quash Requests 7-8 in subpoenas to third parties with business relationships with Blendtec (Blendfresh and Blendid) (**Exhibit A**).¹ Blendtec objected to the subpoenas on December 7, 2022 (**Exhibits B-C**). Blendtec attempted to meet and confer with Blendjet, but Blendjet refused to meet and confer until after the

¹ Blendtec filed this motion on December 9, but, at opposing counsel's request, is re-filing using the short-form procedure.

deadline to respond to the subpoenas (**Exhibit D**).

As set forth in Blendtec's objections (Exhibit B), requests 7-8 seek documents to which Blendtec has a personal or proprietary right. *See Anderson v. Heartland Coca-Cola*, 2022 WL 444092 at *3 (D. Kan. 2022) ("where the party seeking to challenge the subpoena has a personal right or privilege with respect to the subject matter requested in the subpoena" that party may move to quash subpoena). As Request 7 seeks documents related to contracts between Blendtec and the third parties, Blendtec has a proprietary interest in them. *See Beaty v. Kan. Ath.*, 2020 U.S. Dist. LEXIS 74206, at *8 (D. Kan. 2020 (party has right or privilege in documents where it "is a party to the contracts sought") (party had standing to object to subpoena); *North Alabama Fabricating Co. v. Bedeschi Mid-West Conveyor Co.*, 2017 U.S. Dist. LEXIS 157362, at *2 (D. Kan. 2017) ("Because the information requested from nonparty Essar includes contracts, invoices, correspondence and other documents between Essar and Defendant Bedeschi . . . Defendants have a personal right or privilege with respect to the subject matter requested in the subpoena" and have "standing to object to the issuance of the subpoena"); *Indianapolis Airport v. Travelers Prop.*, 2015 U.S. Dist. LEXIS 45123, *3 (S.D. Ind. 2015) (party has personal right in documents regarding contract).

Request 8 seeks confidential information in which Blendtec has a strong proprietary interest. *See Curtis Park Grp. v. Allied World*, 2021 WL 1022703, at *3 (D. Colo. 2021) (objection to subpoena based on "ownership interest" in subpoenaed documents is proper); *Malibu v. Doe*, 2013 WL 24526, at *2 (D. Colo. 2013) (court may quash subpoena based on a party's claim of privilege, personal interest, or proprietary interest); *Nunes v. Rushton*, 2015 WL 3537018, at *3, n.5 (D. Utah 2015) (addressing party's objections to subpoena stemming from "personal interest

or a proprietary interest in the documents”). Further, the subpoenaed documents are within Blendtec’s possession or control and party discovery is ongoing. Blendtec will produce relevant documents in response to proper document requests, and there is no need to burden third parties at this point. *See Martley v. City of Basehor*, 2022 U.S. Dist. LEXIS 79427, at *8-9 (D. Kan. 2022) (“document requests to a party, rather than subpoenas to the custodial non-party, are the appropriate method to obtain discovery”) (granting motion to quash subpoena designed to circumvent Rule 34).

Blendtec seeks FRCP 37(a)(5)(A)(ii) attorneys’ fees.

DATED this 14th day of December, 2022.

DORSEY & WHITNEY LLP

/s/ Tamara L. Kapaloski

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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December, 2022, a true and correct copy of the foregoing document was filed with the Court's CM/ECF system and served on the following counsel of record via the CM/ECF notification system:

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